

STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION

RECEIVED
JUL 27 2012
ILCC LEGAL

In the Matter of:	)	No. 12 C 100220
	)	No. 12 C 100221
City Beverage – Markham, LLC)	
d/b/a/ City Beverage Markham	)	LIC: 12-2A-102034; 12-2B-69574
2064 W. 167 th St.	)	Exp: 9/30/2012
Markham, IL 60428	)	IBT: 5524-4025
 In the Matter of:	)	No. 12 C 100222
	)	No. 12 C 100223
City Beverage – Markham, LLC)	
d/b/a/ City Beverage –Arlington Heights	)	LIC: 12-2A-102034; 12-2B-69575
1401 E. Algonquin Rd.	)	Exp: 9/30/2012
Arlington Heights, IL 60005	)	IBT: 3665-2202
 In the Matter of:	)	No. 12 C 100218
	)	No. 12 C 100219
Chicago Distributing LLC)	
d/b/a/ City Beverage - Chicago	)	LIC: 12-2A-96603; 12-2B-64729
4841 S. California Ave.	)	Exp: 10/31/2012
Chicago, IL 60632	)	IBT: 5515-9060
 In the Matter of:	)	No. 12 C 100216
	)	No. 12 C 100217
City Beverage LLC)	
d/b/a/ City Beverage	)	LIC: 12-2A-98399; 12-2B-61392
1105 E. Lafayette Ave.	)	Exp: 3/31/2013
Bloomington, IL 61701	)	IBT: 5509-8851

**RESPONDENTS' MOTION IN THE ALTERNATIVE TO CONTINUE
ANY HEARING OR DISPOSITION OF THE LEGAL DIVISION'S
MOTION FOR SUMMARY JUDGMENT**

1. As set forth in Respondents' concurrently filed motion to strike, the Legal Division's motion for summary judgment is procedurally and substantively deficient, fails to set forth applicable legal principles, and should, as a result, be stricken. However, if the ILCC denies Respondents' motion to strike, Respondents respectfully request a continuance so that they can take the discovery reasonably necessary to respond to the motion for summary judgment.

2. As the Legal Division suggests, certain facts are undisputed: A-B Inc. brews beer and holds a non-resident dealer's license; WEDCO is an affiliate of A-B Inc., and it holds a 30 percent interest in CITY Beverage – Illinois, LLC (“CITY Beverage”); CITY Beverage has three subsidiaries that hold distributor's and importing distributor's licenses. These facts were thoroughly considered by the Legal Division when it originally approved WEDCO's 30 percent interest in 2005 and the sale of CITY Beverage to BDT Capital Partners in 2010.¹

3. But, the facts relevant to the charges presented in the Amended Citation are broader than those limited undisputed facts. It is undisputed that for more than thirty years A-B Inc. and its affiliates have owned in whole and/or in part beer distributors in Illinois. It is also undisputed that the ILCC has issued licenses to those distributors during that time period. The facts in dispute, at minimum, relate to why and when the Legal Division contradicted decades of prior statutory interpretation and prior licensing of distributors affiliated with brewers. These disputed facts require discovery and are related to both defenses asserted by Respondents.

4. Respondents' two defenses are that WEDCO's 30 percent interest in CITY Beverage is permissible under the proper interpretation of the Liquor Control Act and that the ILCC should be equitably estopped from enforcing the Legal Division's interpretation of the Liquor Control Act and Craft Brewers Act given that A-B Inc. and its affiliate WEDCO have made long term strategy and capital allocation decisions based on the ILCC's issuance of

¹ Respondents dispute that the evidence shows that WEDCO has a “management interest” in CITY Beverage. This contention from the Legal Division is contradicted by the very documents the Legal Division cited as support, which indicate that WEDCO merely has the customary shareholder right to approve certain CITY Beverage management employees. Moreover, this inquiry is irrelevant under the Liquor Control Act.

distributor's licenses to A-B Inc. and its affiliates.² There are a variety of facts that are relevant to these defenses, including how the ILCC interpreted the statute for the last 30 years, how the ILCC licensed brewers (Anheuser-Busch and others) during that time and approved the 2005 transaction relating to CITY Beverage, and why the Legal Division recently changed that interpretation. The evidence may show that the new interpretation is unreasonable and erroneous, that the ILCC consistently licensed brewers as distributors based on the Legal Division's long-standing interpretation, and that outside interests sought to persuade the Legal Division to change its statutory interpretation. This evidence is vital to Respondents' case, particularly in light of known evidence that conflicts with the statutory interpretation surprisingly adopted by the Legal Division in February 2010.

5. Indeed, in 2005, following years of planning, A-B Inc. and WEDCO entered into a long-term relationship relating to CITY Beverage. The parties did not close that transaction until the ILCC Chief Legal Counsel, William O'Donaghue—after consultation with ABDI, WSDI, and the ILCC executive director—informed A-B Inc. that there was no legal impediment to the transaction and accordingly approved it. (*See, e.g.*, Transcript of ILCC public meeting held December 7, 2011, at 42.) The ILCC renewed the CITY Beverage distributor's license annually after 2005, through the present. Then, in 2010, the ILCC issued its Declaratory Ruling, permitting WEDCO to maintain its 30% interest in CITY Beverage. Respondents seek to gather evidence related to these ILCC actions upon which Respondents detrimentally relied. They believe that the evidence will demonstrate the reasonableness of their reliance.

² The motion for summary judgment declines to discuss the merits of the Legal Division's position on the statutory interpretation issue.

6. Without such discovery, Respondents cannot present all relevant facts relating to the factual questions identified above and other disputed facts that may come to light as the result of discovery.

WHEREFORE, if the ILCC does not strike the summary judgment motion, Respondents respectfully request a continuance of the summary judgment motion so that they can take discovery.

Dated: July 27, 2012

/s/ Thomas J. Verticchio

Dale G. Wills

Thomas J. Verticchio

SWANSON, MARTIN & BELL, LLP

330 N. Wabash, Suite 3300

Chicago, IL 60611

312-321-9100 (Telephone)

312-321-0990 (Facsimile)

Counsel for CITY Beverage – Illinois, L.L.C.
and its affiliates

/s/ Irene F. Bahr

Irene F. Bahr

LAW OFFICE OF IRENE F. BAHR

1751 S Naperville Rd., Ste. 209

Wheaton, IL 60189

630-462-1113 (Telephone)

630-462-1273 (Facsimile)

Edward M. Crane

Albert L. Hogan, III

Andrew J. Fuchs

Nathan A. Shev

SKADDEN, ARPS, SLATE,

MEAGHER & FLOM LLP

155 North Wacker Drive

Chicago, Illinois 60606

312-407-0700 (Telephone)

312-407-0411 (Facsimile)

Counsel for WEDCO

Proof of Service

Now comes the undersigned, an attorney, and does hereby state that the above motion was served on July 27, 2012, and was served via e-mail and hand delivery on Stephen B. Schnorf, Michael V. Casey, and Richard Haymaker, Illinois Liquor Control Commission, at 100 W. Randolph St., Room 7-801, Chicago, IL 60601.

/s/ Edward M. Crane

Edward M. Crane

**STATE OF ILLINOIS
LIQUOR CONTROL COMMISSION**

In the Matter of:	)	No. 12 C 100220
	)	No. 12 C 100221
City Beverage – Markham, LLC)	
d/b/a/ City Beverage Markham	)	LIC: 12-2A-102035; 12-2B-69574
2064 W. 167 th St.	)	Exp: 9/30/2012
Markham, IL 60428	)	IBT: 5524-4025

In the Matter of:	)	No. 12 C 100222
	)	No. 12 C 100223
City Beverage – Markham, LLC)	
d/b/a/ City Beverage –Arlington Heights	)	LIC: 12-2A-102034; 12-2B-69575
1401 E. Algonquin Rd.	)	Exp: 9/30/2012
Arlington Heights, IL 60005	)	IBT: 3665-2202

In the Matter of:	)	No. 12 C 100218
	)	No. 12 C 100219
Chicago Distributing LLC)	
d/b/a/ City Beverage - Chicago	)	LIC: 12-2A-96603; 12-2B-64729
4841 S. California Ave.	)	Exp: 10/31/2012
Chicago, IL 60632	)	IBT: 5515-9060

In the Matter of:	)	No. 12 C 100216
	)	No. 12 C 100217
City Beverage LLC)	
d/b/a/ City Beverage	)	LIC: 12-2A-98399; 12-2B-61392
1105 E. Lafayette Ave.	)	Exp: 3/31/2013
Bloomington, IL 61701	)	IBT: 5509-8851

**AFFIDAVIT OF EDWARD M. CRANE IN SUPPORT OF RESPONDENTS' MOTION
IN THE ALTERNATIVE TO CONTINUE ANY HEARING OR DISPOSITION OF THE
LEGAL DIVISION'S MOTION FOR SUMMARY JUDGMENT**

1. I, Edward M. Crane, have personal knowledge of these matters as set forth herein and could testify competently about these matters if called as a witness.
2. I am an attorney representing WEDCO in this matter before the ILCC.
3. I make this affidavit in support of Respondents' response to the Legal Division's motion for summary judgment.

4. Respondents' two main defenses in this matter are that WEDCO's 30 percent interest in CITY Beverage is permissible under the proper interpretation of the Liquor Control Act and that the ILCC should be equitably estopped from enforcing the Legal Division's new interpretation of the Liquor Control Act against WEDCO and CITY Beverage.

5. In the event that Respondents' motion to strike the motion for summary judgment is not granted, Respondents will not be able to completely respond to the motion for summary judgment because they have not yet been permitted the opportunity to take discovery. Respondents believe that the discovery requests they submitted on July 18, 2012, are narrowly tailored to lead to evidence that will be helpful in establishing the above defenses.

6. There are a variety of facts that are relevant to these defenses including how the ILCC interpreted the statute for the last 30 years, how the ILCC licensed brewers during that time, and why the Legal Division recently changed that interpretation. These facts are significant because they relate to the error of the Legal Division's new interpretation. Respondents believe the evidence will show that the new interpretation is erroneous, that the ILCC consistently licensed brewers as distributors based on the Legal Division's long-standing interpretation, and that outside interests sought to have the Legal Division change its interpretation in and around February 2010. Moreover, A-B Inc. and its affiliate WEDCO have made long term strategy and capital allocation decisions based on the ILCC's issuance of distributor's licenses to A-B Inc. and its affiliates over the last thirty years, and in particular the ILCC's 2005 approval of the CITY Beverage transaction and Declaration B of the 2010 Declaratory Ruling. Respondents seek to gather evidence related to these ILCC actions upon which Respondents relied. They believe that the evidence will demonstrate the reasonableness of their reliance.

7. Respondents' request for a continuance is made in good faith and for purpose of obtaining relevant evidence necessary for defenses asserted by Respondents and is not made for the purpose of unduly delaying these proceedings.

Edward M. Crane
Edward M. Crane

Sworn to before me this 27 day of
July, 2012

Jacquelyn Mendoza
Notary Public

